

Hearing:

October 7, 1997

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SIMMS/MD

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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Better Government Bureau, Inc.

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Serial No. 74/615,800

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Roger P. Furey of Arter & Hadden for Better Government  
Bureau, Inc.

Linda M. Dwyer, Trademark Examining Attorney, Law Office 101  
(R. Ellsworth Williams, Managing Attorney).

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Before Simms, Seeherman and Hohein, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Better Government Bureau, Inc. (applicant), an Ohio  
corporation, has appealed from the final refusal of the  
Trademark Examining Attorney to register the mark BETTER  
GOVERNMENT BUREAU for the following services: "promoting  
and advocating the interests of its dues-paying citizen and  
business members in the fields of politics and government

regulation.”<sup>1</sup> The Examining Attorney has finally refused registration under Section 2(d) of the Act, 15 USC §1052(d), on the basis of four registrations held by the Council of Better Business Bureaus, Inc. These registrations cover the marks BETTER BUSINESS BUREAU per se (Registration No. 566,415, issued November 4, 1952, pursuant to Section 2(f) of the Act, 15 USC §1052(f), twice renewed; Registration No. 969,847, issued October 2, 1973, renewed; and Registration No. 971,579, issued October 23, 1973, renewed) and one registration covering that mark along with the letters BBB and torch design. These marks have been registered for the following services: “investigative and information services relative to business and trade practices for protecting responsible business against abusive business practices and for establishing and maintaining legitimate advertising and merchandising practices”; and for “indicating membership in applicant” (a collective membership mark).

Applicant and the Examining Attorney have submitted briefs and an oral hearing was held.

Applicant's Argument

It is applicant's position that the marks BETTER BUSINESS BUREAU and BETTER GOVERNMENT BUREAU are different

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<sup>1</sup> Application Serial No. 74/615,800, filed December 27, 1994, under Section 1(a) of the Act, 15 USC §1051(a). Applicant has

in sound, appearance and commercial impression. In this regard, applicant argues that the word "GOVERNMENT" in its mark and the word "BUSINESS" in registrant's marks suggest different things in the context of the respective services--improving government on the one hand and improving business on the other. While applicant has conceded that the mark BETTER BUSINESS BUREAU is "famous and well recognized" (brief, 4), that it has achieved a "high level of public awareness" (brief, 14) and that registrant's "operations...are probably as famous and recognized as any in this country..." (brief, 15; response, filed September 11, 1995, 8), it is nevertheless applicant's position that the fact that its mark may call to mind registrant's marks means that the mind is distinguishing the respective marks. In other words, argues applicant, the public will notice that the marks are different.

With respect to the services, it is applicant's position that its services travel in different channels of distribution and are offered to relatively sophisticated consumers after a careful, deliberative process. In this regard, applicant argues that its customers must complete an application which describes applicant's political advocacy functions as well as the member benefits, and then pay dues to applicant. Applicant argues, therefore, that such

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claimed use since on or before July 31, 1993, and use in commerce

consumers are not likely to be confused. Applicant also points out that its services include combating government corruption, fighting for lower taxes and fewer government restrictions as well as less bureaucracy. Applicant contrasts its services with registrant's services which include acting as an information clearinghouse of which the public can avail itself free of charge. Registrant's services, according to applicant, include the furthering of business honesty, the fostering of truth in advertising, as well as protecting the public and business from unfair business practices. Applicant argues that the ordinarily prudent consumer will not select applicant's services thinking that applicant is the registrant.

Applicant has also pointed to the Nexis articles which it made of record tending to demonstrate that there are at least six other entities which have the terms "BETTER" and "BUREAU" in their names--BETTER BURRO BUREAU, BETTER BABIES BUREAU, BETTER JUSTICE BUREAU, BETTER BICYCLING BUREAU, and BETTER BAPTIST BUREAU. Applicant argues, therefore, that consumers have become accustomed and attuned to dealing with a "wide variety of entities" sharing the same two components that are shared by applicant and the registrant.<sup>2</sup>

Examining Attorney's Argument

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since on or before October 31, 1993.

The Examining Attorney, on the other hand, argues that the points of similarity of the respective marks are of greater importance than their differences. The Examining Attorney argues that the marks convey similar commercial impressions, one indicating, in context, that the services involve attempts to improve business while the other involve attempts to improve government. With respect to the alleged third-party uses of marks and trade names which include the words "BETTER" and "BUREAU," the Examining Attorney notes that a search revealed a total of only fifteen Nexis articles covering all six of these third-party names. The Examining Attorney argues, therefore, that the public exposure to these other names or marks is very small and that there is no proof that the public is familiar with them. By comparison, the Examining Attorney states that over 13,600 articles referred to the "Better Business Bureau" while 96 referred to the "Better Government Bureau." Also, the Examining Attorney argues that the subject matter of the services of those third parties is completely unrelated to the services of applicant and registrant herein. To the extent that the public may be aware of these third-party uses, the Examining Attorney argues that they

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<sup>2</sup> On remand, this additional evidence was considered by the Examining Attorney and is of record. See the Board's letter of October 8, 1996.

are not likely to associate these with either applicant or registrant.

The Examining Attorney further notes that applicant has conceded the fame of the registered marks and argues that the fame of a mark contributes to the likelihood of confusion because famous marks are afforded more protection for their established goodwill.

With respect to the services, the Examining Attorney argues that they are "generally similar." The Examining Attorney notes that, according to the Nexis evidence of record, applicant's president is a former officer of the Council of Better Business Bureaus who established applicant after leaving the registrant's organization. Also, the Examining Attorney maintains that both registrant and applicant may investigate complaints about inequitable or illegal conduct and that both organizations provide information to the public. The Examining Attorney argues that registrant may expand its investigative services to extend to alleged inequitable or illegal government activities, or registrant may lobby for changes in the law to protect the public. Essentially, it is the Examining Attorney's position that the general public may join either applicant or registrant and that the public may think that registrant started a "branch operation" to handle complaints about government activity. These people may think,

therefore, that applicant is connected or related to registrant. The same class of consumers (both individuals and businesses), the Examining Attorney notes, may become members of either applicant or registrant.

#### Discussion and Opinion

After careful consideration of this record and the arguments of the attorneys, we believe that applicant's mark as used in connection with its services offered to citizen and business members in the fields of politics and government regulation so resembles the registered marks as to be likely to cause confusion. In order for there to be a likelihood of confusion, the respective marks and services need not be identical. Services only need be related in some manner, or conditions surrounding their marketing be such, that the respective services could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the services come from the same source. See, for example, *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985). Here, there is no doubt that registrant's investigative and information services relative to business and trade practices and applicant's services offered to dues-paying citizens and businesses in the fields of politics and government regulation are specifically different services. However, we believe that the general

public and the business community in general, familiar with registrant's famous marks used in connection with registrant's business-related services who then encounter applicant's mark used in connection with applicant's services may well believe, because of the similarity of the respective marks, that applicant's services are sponsored by or endorsed by registrant, or that applicant is an organization that has been established by registrant.

While the respective marks are not identical, we agree with the Examining Attorney that they have obvious similarities in structure, differing only in the second word of each mark. We note, as did the Examining Attorney, that the fame of a mark (conceded by applicant) is entitled to be considered in the likelihood-of-confusion analysis, *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992), and that "a strong mark...casts a long shadow which competitors must avoid." In *re Ferrero*, 479 F.2d 1395, 178 USPQ 167, 168 (CCPA 1973). In situations where there is a famous mark, as well as where the applicant is aware of the previously used mark, there is a legal duty to select a mark which is sufficiently dissimilar from the famous mark. Accordingly, and in accordance with the established precedent, resolving any doubt in favor of the prior user and registrant, we believe



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that confusion is likely with respect to all of registrant's registered marks.

Decision: The refusal of registration is affirmed.

R. L. Simms

E. J. Seeherman

G. D. Hohein

Administrative  
Trademark Judges,  
Trademark Trial and  
Appeal Board

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